IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 39 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

ARVIND MILLS LTD.

Appearance:

MR M.R. Bhatth for Petitione

MR M J.Shah for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 05/09/2000

ORAL JUDGEMENT

Per Dharmadhikari, C.J.:

In the case of the present assessee for the assessment year 1978/79, the following questions of law under section 256 (1) of the Income tax Act, 1961 have been referred to us for answer:

(i) Whether on the facts and in the circumstances of the case, the assessee is entitled in law to the allowance of Rs. 2,33,300/- being royalty paid to M/s Mettur Beardsell Ltd.as claimed ?

(ii) Whether on the facts and in the circumstances of the case, the assessee is entitled to allowance of Rs. 7,771/- being reimbursement of medical expenses paid to Managing Director ?

(iii) Whether the Tribunal has been right in law in sustaining the deletion of disallowance of Rs. 8,969/- in respect of guest house expenses and directing allowance of depreciation on dead stock and furniture?

Learned counsel appearing for the department and the assessee submit that question No.1 has been squarely covered by the decision of this Court in the case of CIT vs. Ashoka Mills, 218 ITR 525. It was held that the process employed under the trade name 'Tebilized' conferring an anti crease property on the cloth for the purpose of making the cloth more marketable and profitable did not create any asset. Since it enabled the assessor to confer on the product the advantage of better quality and marketability, as revenue expenditure,it is deductible under section 43A of the Act.Relying on the aforesaid decision in case of Ashoka Mills (supra), the question is answered in favour of the assessee.

Learned counsel appearing for the parties state that question No.2 is squarely covered against the assessee b y the decision of this court in the case of CIT vs. Raipur Manufacturing Co. 231 ITR 598. It was held that the sum paid to the Managing Director for reimbursement of medical expenses was to be included while computing the disallowance under section 40 (c) of the Income tax Act.

The third question is said to have been squarely covered by the decision of this court in CIT vs. Gaekwar Mills Ltd. 193 ITR 734. The question with regard to deletion of disallowance of Rs. 8,969/- in respect of guest house expenditure etc. has to be answered in favour of the assesee. But so far as allowance of depreciation on dead stock and furniture is concerned, relying on the same judgment (supra), the question has to be answered against the assessee. In the case of Gaekwar Mills (supra), it has been held that residential accommodation maintained in the nature of guest house was covered within the meaning of clause (i) of Section 37(4) of the Act. The expenditure has not been incurred for maintenance of residential accommodation but for the guest house and therefore, no part of such expenditure can be disallowed under section 37 (4) (i) of the Act.

The guest house expenses,therefore, have to be allowed to the assessee.

So far as allowance claimed for depreciation for dead stock and furniture in the guest house is concerned, it was held that residential accommodation being in the nature of guest house within the meaning of clause (i) of section 37 (4), depreciation to that part of the building of the assessee used as guest house is not allowable under clause (i) of section 37 (4) of the Act.

In the result, question No.1 is answered in favour of the assessee and against the revenue.

Question No.2 is answered against the assessee and in favour of the revenue.

Part of question No.3 with regard to guest house expenditure is answered in favour of the assessee and against the revenue, but so far as the last part of question No.3 with regard to claim for allowance for depreciation on the dead stock and furniture of guest house is conce
assessee and in favour of the revenue.

Reference is answered accordingly, but with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R.Dave,J.)

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